

IT 95-35
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )   Case No.  
                               )   SSN  
                               )  
v.                             )  
                               )   Mary Gilhooly Japlon  
XXXXXX                        )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX and XXXXX (hereinafter referred to as "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on November 18, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that they had failed to file an Illinois income tax return for the years ending December 31, 1982, 1987 and 1988 (hereinafter referred to as the "tax year(s)"). The Notice proposed the assessment of tax, as well as various statutory penalties and interest for income earned for the tax years at issue.

The taxpayers appeared at the hearing and offered testimony in their behalf. It is the taxpayers' position that they are presently attempting to be considered for audit reconsideration by the Internal Revenue Service. It is the taxpayers' position that if the tax amount owed to the Federal Government is reduced, the state tax liability would accordingly be reduced. However, at present, the Internal Revenue Service has not accepted the taxpayers' case for audit reconsideration.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional

elements, is established by the Notice of Tax Deficiency issued to the taxpayers on November 18, 1994. (Dept. Ex. No. 1).

2. The basis of the Notice was that the taxpayers failed to file an Illinois income tax return for the years ending December 31, 1982, 1987 and 1988. (Dept. Ex. No. 1).

3. The taxpayers' taxable income was adjusted by the Department to include a completed and settled federal change as provided by statute. (Dept. Ex. No. 1).

4. The Notice showed a tax and penalty amount of \$7,637.00. (Dept. Ex. No. 1).

5. Penalties assessed were for failure to file a timely income tax return for each of the three taxable years at issue, as statutorily required, failure to timely pay the income tax liability and failure to make timely estimated income tax payments. (Dept. Ex. No. 1).

6. The taxpayers made a timely protest to the Notice.

7. The taxpayers are continuing their efforts to be selected for audit reconsideration by the Internal Revenue Service in order to submit documentation in an effort to reduce the federal tax assessed (thereby reducing state tax liability). (Dept. Ex. No. 2).

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides in pertinent part:

904 Deficiencies and Overpayments

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. 35 ILCS 5/904(b).

In addition, the Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides, inter alia, that in the event that there are any changes in the taxable income or the income tax liability in the federal income tax return of any person, that person must notify the Department of such amendments. (35 ILCS 5/506(a)(b)). These taxpayers failed to do so.

The Illinois Income Tax Act, 35 ILCS 5/101 et seq., also provides that penalties be imposed for late filing of any income tax return, failure to pay the entire tax liability by the due date of the return and failure to make the required estimated tax payments. (35 ILCS 5/1001, 1005, 804).

At hearing, the taxpayers asserted that subsequent to the Notice of Deficiency being issued, they located documentation that would reduce the amount of taxable income, thereby lessening the amount of federal, as well as state, tax liability. They stated that they are attempting to be reaudited by the Internal Revenue Service. However, at this stage, they have not been selected for audit reconsideration.

As the Department adjusted the taxpayers' taxable income to include a completed and settled federal change, those figures are final. The figures set forth on the Notice of Deficiency are deemed prima facie true and correct and stand as issued unless and until there is subsequent federal change.

Therefore, based upon the evidence of record, it is my recommendation that the Notice of Deficiency issued in this cause be finalized as issued.

Mary Gilhooly Japlon
Administrative Law Judge